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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

COREY JORDEN FERRERE,

Defendant and Appellant.

A152112

(Sonoma County
Super. Ct. No. SCR682065)

Defendant Corey Jorden Ferrere appeals a judgment entered upon his plea of no contest to leaving the scene of an accident (Veh. Code, § 20001, subd. (a)) and reckless driving causing great bodily injury (Veh. Code, § 23014, subd. (b), Pen. Code, § 12022.7).¹ His sole contention on appeal is that the trial court abused its discretion in denying his motion to strike a prior conviction allegation. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*)). We shall affirm the judgment.

I. BACKGROUND

A. The Current Offense

At approximately 2:00 a.m. on June 6, 2016, defendant was driving a truck on Highway 101, with two friends as passengers. He had been drinking heavily. He swerved as he drove the truck at a speed estimated by witnesses to be between 85 miles an hour and more than 100 miles an hour. The truck “spun out” and fell over an

¹ All undesignated statutory references are to the Penal Code.

embankment, landing on its roof. Defendant's two friends were trapped in the car. Defendant asked his friends if they were all right, then fled the scene. Six days later, he called a police officer, told him he knew the police were looking for him, and made arrangements to surrender.

Defendant's two friends suffered serious injuries. One had a fractured neck and sternum, three broken ribs, a laceration to his ear that required stitches, a severe concussion, which resulted in amnesia, and cuts and bruises. He spent two days in the hospital. As of October 26, 2016, he was still unable to work. The other friend suffered a broken neck and lacerations to his head, which required staples. He underwent spinal surgery, and had only partial use of his arms. He also suffered a shoulder injury and nerve damage. As of October 26, 2016, he had not returned to work.

Defendant was charged with leaving the scene of an accident (Veh. Code, § 20001, subd. (a); count one) and reckless driving causing great bodily injury (Veh. Code, § 23104, subd. (b), Pen. Code, § 12022.7; count two). Count two included allegations that he had previously been convicted of driving with a blood alcohol level of 0.08 percent or more (Veh. Code, § 23152, subd. (b)) and reckless driving (Veh. Code, § 23103.5). The information also included allegations that defendant had been convicted in 2008 of attempted robbery (§§ 211 & 664), which was a serious or violent felony (§ 667, subd. (a)(1)) and a "strike" for purposes of the Three Strikes law (§§ 667, subds. (d) & (e), 1170.12, subds. (b) & (c)), and that he had also been convicted of two other felonies, assault with a deadly weapon (§ 245, subd. (a)(1)), committed in 2005, and possession of cannabis for sale (Health & Saf. Code, § 11359), committed in 2012. Defendant pled no contest to both counts and admitted all prior conviction allegations.

B. *Romero* Motion

Before sentencing, defendant brought a *Romero* motion, asking the court to dismiss the strike finding in the furtherance of justice. (§ 1385, subd. (a).) He argued that his strike offense, attempted robbery, was "somewhat less serious than typical strike priors" and "somewhat distant in time," and was committed when he was just 21 years of age. He also submitted letters from his wife, his parents, his grandparents, his therapist,

his employer, his Alcoholics Anonymous sponsor, and a retired deputy sheriff. The letters attested to defendant's recent efforts to address his alcoholism, his improvements in acting as a responsible father and husband, his positive attributes as an employee, his work ethic, and his remorse over the harm he caused. A letter from the Sonoma County Probation Department indicated defendant had participated in services at the county's Day Reporting Center, including aggression therapy, cognitive behavioral intervention, and outpatient substance abuse between July 30, 2015 and March 28, 2016, while he was on probation for another offense. Since the current offense, committed in June 2016, defendant had engaged in services sporadically.

The motion also included defendant's written statement. In it, he apologized to the two friends who were in the truck with him and to his wife's grandmother, who owned the truck. He acknowledged that he had caused pain to people he cared for and stated he had stopped drinking, was attending therapy, and had become a better husband, father, and provider.

The circumstances of the prior offense were as follows: The victim of the attempted robbery left a Target store with another person (the witness), and they walked to their vehicle. Defendant approached them and told them to " 'give me everything you have or I'm gonna knock you out.' " The victim refused, and defendant punched him in the face twice. The victim ran back to the store. The witness got into the vehicle and locked the doors. Defendant chased the victim, then returned to the vehicle and punched the passenger side of the vehicle twice before leaving the area. The victim suffered a laceration on his cheek and a bruised and swollen upper lip.

C. Presentence Report

The probation department submitted a presentence report before defendant was sentenced in the current action. The report indicated that defendant had seven prior felony or misdemeanor convictions between 2005 and 2013, and he had violated his probation several times. It also noted that he began consuming alcohol recreationally at age 14 and became a regular drinker by age 18 or 19. His alcohol use had affected his work performance " 'on and off,' " and he recognized that it was a problem for him. He

had used marijuana, methamphetamine, opiates, and other substances, and he believed that substance abuse was a problem in his life and affected his family.

In discussing the current offense, defendant said that when he left the scene of the collision, he believed help was coming because he saw bystanders and heard sirens. He expressed remorse for his actions. He said he had been drinking heavily that day and was drunk when he was driving the truck.

Defendant expressed his intent to address his drinking problem with therapy, classes, and volunteer work. In the past, he had attended a 30-day inpatient program in 2005 or 2006, a six-month inpatient program in 2007 or 2008, a “first offender DUI class” in 2009 or 2010, and a 12-week “Moral Reconciliation Therapy” program while in custody in 2016. Since his arrest in this case, he had contacted a number of programs and said he was trying to obtain a better understanding of why he drinks.

D. Ruling and Sentencing

The trial court denied the *Romero* motion. It noted that the prior strike offense involved defendant “com[ing] up and terroriz[ing] a complete stranger,” and noted that although the 2008 conviction was not “fresh,” defendant had not lived a conviction-free life since then. The court had read the letters attached to the motion and recognized that defendant had “strong community support” and that defendant had checked on his friends’ welfare before leaving the scene of the accident, but also noted the severity of the injuries defendant’s passengers had suffered.

The court sentenced defendant to a term four years for count one, a concurrent term of 32 months for count two, and an additional five years for the prior serious felony conviction (§ 667, subd. (a)(1)), for a total term of nine years.

II. DISCUSSION

Defendant contends the trial court abused its discretion in denying his *Romero* motion. In *Romero*, our high court held that, in the furtherance of justice, a trial court may strike or vacate an allegation or finding under the Three Strikes law that the defendant has previously been convicted of a serious or violent felony. (*Romero, supra*, 13 Cal.4th at pp. 529–530; § 1385, subd. (a).) In ruling on whether to strike or vacate a

prior serious and/or violent felony conviction allegation or finding, the court “must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*).)

We review the trial court’s ruling on a *Romero* motion under the deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 374 (*Carmony*); *Williams, supra*, 17 Cal.4th at p. 162.) The trial court “does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Carmony*, at p. 377.) “ ‘[W]here the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling, even if we might have ruled differently in the first instance.’ ” (*Id.* at p. 378.) “ ‘[T]he striking of a prior serious felony conviction is not a routine matter. It is an extraordinary exercise of discretion’ ” (*People v. McGlothin* (1998) 67 Cal.App.4th 468, 474 (*McGlothin*).)

Some of the factors that have been found to indicate a defendant falls within the spirit of the Three Strikes law are a crime’s potential for great bodily harm, the number and seriousness of a defendant’s prior convictions, poor previous performance on probation (*McGlothin, supra*, 67 Cal.App.4th at pp. 475–476; *People v. Strong* (2001) 87 Cal.App.4th 328, 344; *People v. Philpot* (2004) 122 Cal.App.4th 893, 907), additional crimes intervening between the strike offense and the current offense, and multiple convictions for similar behavior (such as driving under the influence) (*Williams, supra*, 17 Cal.4th at p. 163).

Defendant contends he falls outside the spirit of the Three Strikes law because of his young age at the time of his strike prior, the lack of planning or sophistication in his criminal conduct, the contribution of his substance abuse problems to his criminal behavior, and the support of his family, friends, therapist, and employer. As a result of

these factors, he argues he is not the sort of career criminal from which the Three Strikes laws protects the public, and the court's ruling did not serve the ends of justice.

We disagree. The trial court recognized that defendant checked on the welfare of his friends before fleeing the scene of the accident, and it noted the support he was receiving from his community. We also acknowledge the efforts defendant was apparently making to address his substance abuse problems. However, defendant's criminal history reaches back to 2005. In the ensuing years, he was convicted of seven crimes, three of them felonies, including robbery and assault with a deadly weapon; he had multiple jail commitments; he was committed to prison; and he violated his probation or conditional sentence multiple times. Although his strike prior occurred eight years before the current offense, defendant collected two additional misdemeanor convictions in the meantime. He had been convicted of driving under the influence and of reckless driving. He was ordered to attend a "wet reckless" program after his 2012 conviction of reckless driving (Veh. Code, § 23103.5), and he attended the county's Day Reporting Center program, including a substance abuse group, between July 2015 and March 2016, while he was on probation. Nevertheless, less than three months after he stopped attending that program, he committed the current offense, which left his two passengers trapped in a vehicle and seriously injured as defendant fled the scene of an accident, apparently intoxicated. This is not an extraordinary case in which no reasonable person could find defendant falls within the spirit of the Three Strikes law. (See *Carmony*, *supra*, 33 Cal.4th at p. 378.)

The trial court acted within its discretion in denying defendant's *Romero* motion.

III. DISPOSITION

The judgment is affirmed.

TUCHER, J.

WE CONCUR:

POLLAK, P. J.

STREETER, J.

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